to restore is equitably only concurrent with the defendant's duty to repay, and as here the defendant cannot do so in full, the plaintiff acts fairly if he retains what he has. Nor can the defendant's creditors complain of this arrangement. The plaintiff's money is not and, as we have submitted, ought not to become part of the defendant's estate, and so the demand that the latter be put in *statu quo* would remit the plaintiff to his claim for a dividend and gives the creditors an undue advantage at his expense.

Because the requirement that the defendant be put in *statu quo* was a method of reaching a just result in the majority of cases, the idea became to some extent prevalent, that it was always necessary.[7] Many courts, however, more recently have recognized the underlying equitable principle and have refused to be governed by any wooden rule regardless of the circumstances. Mere failure to replace the defendant in *statu quo* without more will not be a bar where the plaintiff gets no undue advantage by this failure,[8] and where circumstances allow it, courts have been willing to set off corresponding claims when justice would be done and needless routine avoided.[9] Thus the result reached by the New Hampshire court, being the one most conformable with the merits of the case, is entirely commendable.

RECENT CASES

ALIENS — STATUS OF ALIEN ENEMIES IN THE COURTS OF A BELLIGERENT. — In an action for personal injuries it appeared that the plaintiff was an alien enemy. The plaintiff was still resident in Canada by permission of certain Orders in Council. *Held*, that the plaintiff can recover. *Topay* v. *Crow's Nest Pass Coal Co.*, 29 West. L. R. 555 (B. C.).

In an action on an insurance policy it appeared that the defendant was an alien enemy. *Held*, that the plaintiff can recover. *Robinson & Co.* v. *Continental Insurance Co.*, 31 T. L. R. 20 (K. B. Div.).

For a discussion of the status of an alien enemy in the courts of a belligerent, see NOTES, p. 312.

BANKRUPTCY — PREFERENCES — EFFECT OF RE-TRANSFER TO DEBTOR BEFORE PETITION. — A preferred creditor surrendered his preference to the debtor gratuitously and in good faith before the petition in bankruptcy was filed. The property thus surrendered was wasted by the debtor and never reached the hands of the trustee. In a suit by the trustee to recover the value of this preference, the creditor pleads the surrender. *Held*, that the plea states a good defense. *Lucey* v. *Matteson*, 32 Am. B. R. 782 (Dist. Ct., N. D., N. Y.).

After adjudication a creditor should surrender his preference to the trustee and not to the bankrupt. *In re Currier*, Fed. Cas., No. 3,492. Between the filing of the petition and adjudication, a creditor making a surrender to the

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[7] Hunt *v.* Silk, 5 East 449; see Thayer *v.* Turner, 8 Metc. (Mass.) 550, 552; Beed *v.* Blandford, 2 Y. & J. 278, 283.

[8] Basye *v.* Paola Refining Co., 79 Kan. 755, 101 Pac. 658; Creveling *v.* Banta, 138 Ia. 47, 115 N. W. 598.

[9] Sloane *v.* Shiffer, 156 Pa. 59, 27 Atl. 67; Farwell *v.* Hilton, 84 Fed. 293. See 12 HARV. L. REV. 65.

insolvent would probably be held responsible to see that it actually reached the trustee. Such a surrender before the filing of the petition, however, would seem to be sufficient to release the preferred creditor from further liability. The present bankruptcy law gives no indication to the contrary, and even allows a preferred creditor who gives the debtor further credit for property which becomes a part of the debtor's estate a set-off to that extent against the amount recoverable by the trustee. BANKRUPTCY ACT OF 1898, § 60 *c*. Moreover, it is unnecessary to show that such new credits remain a part of the debtor's estate at the time of adjudication. *Kaufman* v. *Tredway*, 195 U. S. 271. On similar principles, *bonâ fide* surrenders to the debtor before the petition is filed should be protected, although as a practical matter a creditor would ordinarily hold his preference until forced to give it up. The result reached in the principal case is also in harmony with the general purpose of the Bankruptcy Act. Although there was a technical preference, still no one creditor would obtain a greater percentage of his debt out of the estate than any other. See *Gans* v. *Ellison*, 114 Fed. 734, 737.

BANKRUPTCY — PROCEDURE AND PRACTICE — DISMISSAL OF VOLUNTARY PROCEEDINGS BY CONSENT AFTER ADJUDICATION. — After being adjudicated a bankrupt on a voluntary petition, the debtor, with the consent of all his creditors, moved that the proceedings be dismissed. *Held*, that the motion be refused. *Matter of McKee*, 214 Fed. 885, 32 Am. B. R. 731 (Dist. Ct., N. D., Tex.).

Section 18 *g* of the present bankruptcy act provides that upon the filing of a voluntary petition, the judge shall either "make the adjudication or dismiss the petition." This provision, however, becomes inoperative after the adjudication, which is the final decree on the petition. See *In re Hecox*, 164 Fed. 823, 825. The adjudication itself may be set aside by the court on proof of some flaw in jurisdiction. *In re New England Breeder's Club*, 165 Fed. 517. But except for this general power, the statute specifically provides for the revesting of title in the bankrupt only upon the confirmation of a composition agreement offered by the bankrupt, accepted by a majority of the creditors, and administered under the direction of the court. BANKRUPTCY ACT OF 1898, §§ 12, 70 *f*. Under practically uniform provisions in the act of 1867, it was held that an application for dismissal after adjudication came too late, and that a composition agreement was the only proper method. *In re Sherburne*, Fed. Cas., No. 12,758. An amendment subsequently provided expressly for the bankrupt's regaining both the title and control of his property in the manner desired in the principal case. BANKRUPTCY ACT OF 1874, § 14. As a matter of history, however, the frauds practiced by bankrupts in collusion with powerful creditors under cover of this section led to the repeal of the entire statute. The omission of the provision from the present act seems significant, and proper statutory construction therefore requires the same result that was reached under the former statute, before the amendment.

BANKRUPTCY — PROPERTY PASSING TO TRUSTEE — EFFECT OF 1910 AMENDMENT IN STATES WHERE DOWER IS CHATTEL FOR PAYMENT OF HUSBAND'S DEBTS. — By the local law of Pennsylvania the right of dower was made a chattel for payment of the husband's debts. The referee in bankruptcy now certifies to the court the question whether a trustee in bankruptcy can sell the bankrupt's realty free from the wife's right of dower. *Held*, that he cannot. *Matter of Chotiner*, 216 Fed. 916, 32 Am. B. R. 760 (Dist. Ct., W. D., Pa.).

Under the Pennsylvania law, judgment creditors of the husband could reach the wife's dower right by levying execution upon the land. *Directors of the Poor* v. *Royer*, 43 Pa. 146. Formerly it was held that this right did not pass to the trustee in bankruptcy. *In re Schaeffer*, 105 Fed. 352, 5 Am. B. R. 248; *Porter* v. *Lazear*, 109 U. S. 84. The 1910 amendment to § 47 *a* (2),